

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

UNITED STATES OF AMERICA

v.

WEBSTER JAMES JOHNSON,

Defendant.

:
:
:
:
:
:
:
:

Case No. 5:08-CR-44(HL)

ORDER

On July 17, 2008, Defendant Webster James Johnson was indicted on one count of distribution of crack cocaine in violation of 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(A)(iii), and 18 U.S.C. § 2. Defendant's previous counsel subsequently moved the Court for an order for a psychological or psychiatric evaluation to be conducted by the United States Bureau of Prisons. On October 10, 2008, the Court ordered the examination.

Defendant was examined while in the custody of the Bureau of Prisons, and a psychological evaluation of Defendant was prepared by Jorge Luis, Psy.D. At the request of Defendant's counsel, Defendant was later examined by R. Alan Williams, Ph.D., a licensed psychologist not associated with the Bureau of Prisons. Dr. Williams also prepared a psychological evaluation of Defendant.

A hearing to determine Defendant's competency to stand trial or enter a guilty plea was held on May 27, 2009. Both Dr. Luis and Dr. Williams were present and

testified at the hearing. The Court found both experts to be knowledgeable and credible witnesses.

Title 18 U.S.C. § 4241 provides the standard for determining competency and the consequences for a finding of competency. The code section provides:

(d) Determination and disposition. - If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General.

18 U.S.C. § 4241(d).

The Eleventh Circuit has established a two-part test to determine competency: “(1) Does the defendant suffer from a clinically recognized disorder? and (2) if so, [does] that disorder render the defendant incompetent under the Dusky standard?” Bundy v. Dugger, 850 F.2d 1402, 1407 (11th Cir.1988). Under Dusky, the test of a defendant’s competency to stand trial is whether he has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and whether he has rational as well as factual understanding of the proceedings against him. Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788 (1960).

Not surprisingly, the two experts reached different conclusions on whether Defendant was competent to stand trial or enter a guilty plea. Dr. Williams testified during the hearing that Defendant is moderately retarded. Moderate retardation is a

clinically recognized disorder. In Dr. Williams' opinion, Defendant does not have the ability to consult with his attorney with a reasonable degree of rational understanding and does not have a rational as well as factual understanding of the proceedings against him. On the other hand, Dr. Luis testified that, in his opinion, Defendant does not suffer from even mild retardation, though he conceded that mild retardation is a clinically recognized disorder. Dr. Luis believes that Defendant is competent to stand trial or enter a guilty plea, as he has no mental defect or disease that would prevent him from assisting with his case.

After evaluating the evidence presented during the hearing and the reports submitted by the experts, the Court finds by a preponderance of the evidence that Defendant is not suffering from a mental defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. Accordingly, the Court finds that Defendant is competent to stand trial or enter a guilty plea.

SO ORDERED, this the 28th day of May, 2009.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

mbh